

**TOWN OF NEEDHAM  
CONSERVATION COMMISSION  
MEETING MINUTES  
Thursday, June 25, 2015**

LOCATION: Public Services Administration Building (PSAB), Charles River Room

ATTENDING: Paul Alpert, Janet Carter Bernardo, Stephen Farr, Peter Oehlkers, Sharon Soltzberg, Matthew Varrell (Director of Conservation), Debbie Anderson (Conservation Specialist)

GUESTS: Jeff Birnbaum, Matthew Coll, Paul DeFilippu, Michael Downing, Stephanie Hanson, Joyce Hastings, Joel Kent, Fred Shaw, Pat Shaw, Mike Toohill

J. Carter Bernardo opened the public meeting at 7:35 pm.

**MISCELLANEOUS BUSINESS**

**ENFORCEMENT & VIOLATION UPDATES**

**1357 GREAT PLAIN AVENUE**

The homeowner, Mr. DeFilippu and the contractor, Michael Downing were present. D. Anderson explained the Conservation Department received an anonymous phone call regarding landscaping work being performed at the home close to a stream. D. Anderson visited the site and found M. Downing working on replacing stone pavers of a patio at the end of the driveway. In addition, work taking place included: replacing a brick retaining wall with a stone wall along the driveway and removal of asphalt from the driveway to be re-paved. J. Carter Bernardo asked whether water could get between the pavers. M. Downing replied water could get between the pavers into the sand substrate and into the ground. D. Anderson noted that all of the work was replacement in the same footprint. There is no new impervious area.

An aerial photo from Bing maps (online) show the property prior to the unauthorized work and offers proof that the work was simply replacement, not expansion. D. Anderson reported that M. Downing was compliant and immediately installed erosion control, per her direction. D. Anderson gave M. Downing permission to finish his work on the patio to stabilize the area. He was instructed not to pave the driveway until after meeting with the Commission. J. Carter Bernardo explained to the owner, Mr. DeFilippu that any work on his property may require filing with the Commission. The Commission determined that an after-the-fact Permit would not be necessary but asked the owner to submit a letter with a sketch showing the square footage that was reduced due to a portion of the driveway being replaced by pavers.

**280 NEHOIDEN STREET**

M. Varrell explained that he had spoken to Town Counsel, Dave Tobin, regarding the possibility of the Town cleaning up the fencing and sending a bill to the owner but D. Tobin stated there is no mechanism in the Wetlands Bylaw or the Wetlands Protection Act to allow this. M. Varrell stated that the Commission could send a letter to the owner stating this is still an issue and if the fence is not removed and the fine paid within the next 30 days, they will record the Enforcement Order against the Deed at the Registry. M. Varrell will draft a letter to send to the owner.

## **OWEN'S POULTRY FARM**

M. Varrell explained that the Town may be interested in purchasing the Owen's Farm property in the future. Hank Haff from the Town's Public Facilities, Construction Division had approached M. Varrell as part of their due diligence. M. Varrell researched the property and found an outstanding Enforcement Order pertaining to unpermitted fill, issued in 2004. The EO resulted in a Notice of Intent filing and issuance of an Order of Conditions under the WPA and Bylaw. The owner had appealed the Bylaw OOC to the Superior Court. That appeal was subsequently dismissed. The owner also appealed the WPA OOC to DEP, resulting in a Superseding OOC, affirming the original OOC. That SOOC was appealed and a stay on the adjudicatory process was issued pending the Superior Court process. That stay was never lifted and it appears the adjudicatory hearing is still pending. M. Varrell consulted with DEP and the following options remain: 1) the owner can either ask DEP to have the Adjudicatory Hearing or 2) withdraw their Appeal. Since it is more than 3 years ago, the Bylaw Order requiring the cleanup of the fill is no longer valid. If the owner withdraws the Appeal then the Order immediately goes into effect and he is required to undertake the cleanup. M. Varrell did visit the site and the fill is still there but the area is stable.

M. Varrell stated that it would appear unlikely that the owner would want to remove the fill. If the Town does purchase the property for construction of a school or another purpose, could the Enforcement issue be addressed at that point? J. Carter Bernardo would prefer not to carry the issue forward and make it a "Town issue". According to the Enforcement Order, the owner is required to pull the slope back to a 3:1 slope and re-vegetate it. He would have to re-file under the Bylaw to do the work. S. Farr does not find the remediation work to be so difficult that the Town would have difficulty performing the work if they purchased it. It was most likely never recorded at the Registry of Deeds because it never made it out of Appeal. J. Carter Bernardo recalled the area being used as a "contractor's yard" and the amount of fill was large.

M. Varrell suggested the Commission defer any decision until the Town finishes their "due diligence" research and see if they are even interested in pursuing the property. M. Varrell can also find out whether the Commission could request the "Stay" be lifted. S. Farr asked if the property may be something the Conservation Commission may want to purchase for Conservation land. M. Varrell suggested the Commission voice their support for the purchase of the property and if it is too small for a proposed school, perhaps it could be used for the community farm or conservation land.

## **HEARINGS**

### **38 BROOKSIDE ROAD – NOTICE OF INTENT (DEP FILE #234-737)**

Applicant: Frederic Shaw

Project: Replacement of an existing failed septic system located within the 100-foot Buffer Zone to Bordering Vegetated Wetlands. Work within the 100-foot Buffer Zone includes: two existing cesspools will be pumped clean and removed; and a septic tank and distribution box will be installed to connect the house to the new leaching field. An alternative septic system (Eljen GSF Module) was chosen for the leaching bed.

Present for the Applicant: Joyce Hastings of GLM Engineering Consultants, Inc. and Mr. and Mrs. Shaw

Supporting Documents include:

- ☐ WPA Form 3 – Notice of Intent and supporting documents received June 11, 2015
- ☐ Needham Wetlands Protection Bylaw Application for Permit received June 11, 2015

- ❑ Plan entitled: “Proposed Sewage Disposal System, #38 Brookside Road, Needham, Massachusetts”, prepared by GLM Engineering Consultants, Inc., stamped by Joseph M. Nihill, P.E. No. 45889, dated 6/2/15.

J. Carter Bernardo opened the public meeting at 7:45 p.m. J. Hastings presented the proposed project.

J. Hastings explained the proposed project includes the replacement of a failed cesspool. She described the location of the Bordering Vegetated Wetlands to the proposed work. An alternative “Eljen” system is proposed due to the shallow depth to groundwater on the site. The work will take place within existing lawn. The existing cesspool will be pumped, crushed and filled. A small amount of stockpiling may be necessary adjacent to the rear of the house on the lawn. Staked silt fence is proposed for erosion controls.

***Motion to close the public hearing for 38 BROOKSIDE ROAD (DEP FILE #234-737) by P. Alpert, seconded by S. Soltzberg, approved 5-0-0.***

***Motion to issue an Order of Conditions for 38 BROOKSIDE ROAD (DEP FILE #234-737) by S. Farr, seconded by S. Soltzberg, approved 5-0-0.***

### **1 ELIZABETH CIRCLE – continued NOTICE OF INTENT (DEP FILE #234-7XX)**

Applicant: Jeff Birnbaum

Project: An after-the-fact application for disturbance of Riverfront Area. The Applicant previously removed nine (9) trees and graded the lot, stockpiling all topsoil. Proposed work includes re-landscaping of the lot, including planting of new trees and shrubs, sodding of the lawn, and installation of a patio and fire pit, which is partially within Riverfront Area. An existing fence is proposed to be replaced. The Applicant is proposing to remove an additional five (5) trees within Riverfront Area.

Present for the Applicant: Jeff Birnbaum

Supporting Documents include:

- ❑ WPA Form 3 – Notice of Intent and supporting documents received May 21, 2015
- ❑ Needham Wetlands Protection Bylaw Application for Permit received May 21, 2015
- ❑ Plan entitled: “Site Plan of Land in Needham, MA 1 Elizabeth Circle”, prepared by Everett M. Brooks Co., signed and stamped by Michael S. Kosmo, P.E. #31480 and Bruce Bradford, P.L.S. #38376, dated 11/4/14 (revised 5/18/15).
- ❑ Plan entitled: “Landscape Plan Birnbaum Residence Elizabeth Circle, Needham, MA”, prepared by Belmont Landscape & Tree, dated 4/15/15.
- ❑ Document entitled “Alternative Analysis for 1 Elizabeth Circle”, received at the 6/25/15 Conservation Commission hearing.

J. Carter Bernardo opened the public meeting at 8:06 p.m. M. Varrell stated DEP had not yet issued a File number and he had not received any new information from the Applicant.

The meeting had been continued for the submittal of a revised alternatives analysis, submittal of a species list of proposed trees for removal, photos of the lot prior to the unauthorized work, as well as, the issuance of a DEP File number.

J. Birnbaum handed out a revised alternatives analysis and stated he had labeled the species of trees proposed for removal and changed the proposed Norway spruces to native trees. M. Varrell stated the Commission was looking for a better alternatives analysis explaining why the trees needed to be removed and that removing them would have no adverse impact on the Riverfront Area. J. Carter Bernardo explained that the Commission requires new information to be submitted one week prior to the Hearing so they have time to review it.

Mr. Birnbaum stated he did not have photos of the site prior to the unauthorized work, however, his neighbor concurred that the site was a “dumping ground” prior to the work and would write a letter stating as much. M. Varrell asked for the Plan to show the 200-foot Riverfront Area. J. Carter Bernardo asked why Mr. Birnbaum felt they needed to remove the remaining five trees. He stated the “trees were ruining his plans for the property”. He wants room for his kids to play without trees in the way. He added that there would be plenty of new vegetation installed around the perimeter with the new landscaping plan.

The Commission did not find the revised alternative analysis to be to their satisfaction. Mr. Birnbaum explained that between his property and the stream there are 3 fully landscaped lawns and a swimming pool. S. Farr questioned when the pool had been permitted. Based on a review of the files, the pool was permitted in 2006. The arborist told Mr. Birnbaum that all the remaining trees proposed for removal are red maples.

J. Carter Bernardo explained that the entire filing was lacking and she would appreciate a more “cohesive” application. The Commission requires a Plan showing the size of the trees proposed for removal and the size of the remaining trees and a complete alternatives analysis and they need it a week prior to the continued Hearing on July 9, 2015. P. Alpert stated that if the applicant is unable to complete the application to the satisfaction of the Commission, he should consider hiring a professional to do it for him.

***Motion to continue the public hearing (for submittal of additional information and the issuance of a DEP File number) for 1 ELIZABETH CIRCLE (DEP File #234-7XX) to July 9, 2015 at 8:15 p.m. by S. Farr, seconded by P. Alpert, approved 5-0-0.***

#### **86 PILGRIM ROAD – continued NOTICE OF INTENT (DEP FILE #234-734)**

Applicant: Joel Kent

Project: The proposed project consists of the construction of a 1,200 square foot addition and 112 square foot deck to an existing single-family residence within the 100-foot Buffer Zone to Bordering Vegetated Wetlands and Inland Bank. Portions of the proposed project are located in the 25-foot Buffer Zone. Installation of mitigation plantings is proposed.

Present for the Applicant: Stephanie Hanson of CEI and Joel Kent

Supporting Documents include:

- WPA Form 3 – Notice of Intent and supporting documents received April 9, 2015
- Needham Wetlands Protection Bylaw Application for Permit received April 9, 2015
- Plan entitled: “Site Plan, 86 Pilgrim Road, Needham, MA.” prepared by H. S. & T. Group, Inc., stamped and signed by Hossein Haghazadeh, P.E. No. 42529 and Daniel Tivnan, P.L.S. No. 40047, dated 5/4/2015.
- Documents titled “86 Pilgrim Road, NOI Submittal – Additional Information”, dated May 5, 2015.
- Planting Plan, received May 14, 2015.
- Waiver Request dated June 17, 2015

J. Carter Bernardo opened the public meeting at 8:25 p.m. S. Hanson with CEI presented the continued project. J. Carter Bernardo stated that the Commission had received additional information from the Applicant. J. Kent briefly went over the reason for the proposed addition project again. He explained the reason for the Waiver Request was due to “Financial Hardship” and they are looking to care for his disabled mother-in-law in their own home.

S. Hanson reported that after meeting on-site with M. Varrell and D. Anderson they had made one revision to the wetlands line and it is reflected on the revised plan. In addition, the layout of the addition was revised and is smaller in size. M. Varrell reported that the size didn’t really change but the configuration

did slightly. J. Kent noted it was re-configured to move it away from the wetland and allow the foundation to be dug with a mini-excavator without impacting the wetlands.

J. Carter Bernardo stated that any disturbance of the wetland, even temporary, would not be allowed. She does not believe that the foundation can be constructed that close to the wetland without disturbing it. The Commission is not convinced that the Applicant can not place the addition on the rear of the house instead of the side abutting the wetlands. A full basement is proposed. P. Alpert concurred that there appears to be enough space to the rear of the house outside the 25-foot Buffer Zone to provide with an adequately sized addition for a nursing home level individual. J. Carter Bernardo explained that the Commission just doesn't allow building in the 25-foot zone. J. Kent offered that the builder claims the amount of fill necessary to put the addition on the rear of the house would be prohibitive. S. Hanson reported that DEP had commented on the project asking if the project was meeting the BVW Performance Standards. Mr. Kent had spoken to the Building Department and understands they will not be able to put a stove/oven in the kitchen.

J. Carter Bernardo asked if the Norway maple sapling removal is part of the proposed mitigation. The maples are not located on his property. There are some proposed mitigation plantings. M. Varrell suggested converting lawn in the 25-foot Buffer Zone back to natural vegetation. S. Hanson mentioned there are a children's play area, a shed and mature plantings in that area. J. Kent stated that drywells are proposed to help mitigate runoff. The Commission is having difficulty approving the addition in the 25-foot Buffer Zone as it will set up a precedent. The Commission still does not feel the Applicant has explained why the addition cannot go on the back of the house. The Commission discussed various scenarios with the Applicant to revise the addition so it is outside of the 25-foot Buffer Zone. M. Varrell expressed the need to put "real numbers" to the mitigation efforts compared to the impervious area created by the proposed addition. P. Alpert expressed his difficulty in being convinced that the project is permissible as proposed and doesn't want the Applicant spending additional money and still getting denied. J. Carter Bernardo expressed her frustration that the Commission's suggestions are met with unfavorable responses. P. Oehlkers feels the situation is similar to applying for a variance to the Zoning Board of Appeals. J. Carter Bernardo stated that building the addition in the 25-foot Buffer Zone is not going to be permitted. S. Hanson believes that they were led to believe at the last Hearing the project would be permissible.

***Motion to continue the public hearing (at the request of the Applicant) for 86 PILGRIM ROAD (DEP File #234-734) to July 9, 2015 at 8:30 p.m. by S. Farr, seconded by S. Soltzberg, approved 5-0-0.***

## **RIDGE HILL RESERVATION – NOTICE OF INTENT (DEP FILE #234-736)**

Applicant: Needham Conservation Department

Project: Installation of a wooden footbridge over an intermittent stream. The footbridge will connect the Esker and Loop Trails in the northeast portion of Ridge Hill Reservation. Footings for the bridge will consist of crib-boxes or diamond piers. The footbridge will span the Bank of the stream and result in minor, temporary disturbance of Bordering Vegetated Wetlands and the 100-foot Buffer Zone to Bordering Vegetated Wetlands.

Present for the Applicant: M. Varrell and D. Anderson of the Needham Conservation Department.

Supporting Documents include:

- ☐ WPA Form 3 – Notice of Intent and supporting documents received June 4, 2015
- ☐ Needham Wetlands Protection Bylaw Application for Permit received June 4, 2015

- Plan entitled: “Ridge Hill Foot Bridge at Esker & Loop Trails Ridge Hill Reservation Needham, MA”, prepared by Needham Department of Public Works, signed and stamped by Anthony DelGaizo, P.E. #35445, dated 6/2/15.

J. Carter Bernardo opened the public meeting at 9:40 p.m. The Hearing had been continued for the issuance of a DEP File number. M. Varrell discussed the potential use of diamond piers with SCA and that may be the preferred method over the use of crib boxes as was originally proposed. The Building Inspector was also in favor of using the diamond piers. A Waiver Request was submitted.

***Motion to close the public hearing for RIDGE HILL RESERVATION (DEP FILE #234-736) by P. Alpert, seconded by S. Farr, approved 5-0-0.***

***Motion to waive the 25-foot Buffer Zone requirements for RIDGE HILL RESERVATION (DEP FILE #234-736) by P. Alpert, seconded by S. Farr, approved 5-0-0.***

***Motion to issue an Order of Conditions for RIDGE HILL RESERVATION (DEP FILE #234-736) by P. Alpert, seconded by S. Farr, approved 5-0-0.***

## **OTHER BUSINESS**

### **REQUEST FOR CERTIFICATE OF COMPLIANCE – 1302 SOUTH STREET (DEP FILE #234-627)**

M. Varrell explained that the project was the paving of the driveway. There was an after-the-fact Amendment and installation of blueberry bushes. M. Varrell visited the site and found the blueberry bushes were planted and the appropriate contractual language had been incorporated to require the two year plant monitoring and report preparation.

***Motion to issue a Certificate of Compliance for 1302 SOUTH STREET (DEP FILE #234-627) by S. Soltzberg, seconded by S. Farr, approved 5-0-0.***

### **UPDATE ON FINES**

M. Varrell stated that he had come across a different section of the Wetlands Protection Bylaw regarding the issuance of fines. The language stated that for the first offense the fine was \$100 and the second offense was \$200 which conflicts with the \$300 the Commission had been issuing. J. Carter Bernardo asked for the specific part of the Bylaw where this is listed.

M. Varrell had asked Town Counsel which fine guidance the Commission should be implementing. He had responded that the \$100 and \$200 fines were the limit the Commission could issue with our “ticket book” as a non-criminal fine and a \$300 fine would trigger a criminal complaint and could only be issued by the courts. M. Varrell wasn’t sure of the definition of the term “offense” in this instance and whether it could relate to each day of non-compliance as an “offense” triggering additional fines.

### **REQUEST FOR CERTIFICATE OF COMPLIANCE – WELLESLEY COUNTRY CLUB, 0 FOREST STREET (NGWP #16)**

Mike Toohill of BSC Group gave a brief overview of the project that has taken place. This portion of the Wellesley Country property was at one point a golf hole, then forty years ago they started using the land for temporary landscaping debris. There is a neighbor in Needham who was upset about this operation and complained about stockpiling in the area. There was a stockpile of woodchips, loam and stumps within the 100-foot Buffer Zone to an isolated wetland under the Bylaw. The Commission required the

Club to restore the area which they did in 2011 to 2012. They are now requesting the issuance of a Certificate of Compliance.

M. Varrell had visited the site and had some questions for Mr. Toohill which were answered. M. Varrell stated that the restoration area looked excellent. He mentioned that there were a few deficiencies that he noted. An invasive species control plan was supposed to be submitted per the Order but was never received. The horticulturalist present at the site visit was not able to find reference to the plan. Mr. Toohill explained that he had submitted the original filing while at a different company so he does not have access to those files. Mr. Toohill stated that some invasive species removal efforts did take place. M. Varrell stated that there were not many invasives noted during the inspection. The club will commit to keeping up the invasive species control. The original plan talked about signage at the entrance to the Buffer Zone. Mr. Toohill stated concrete blocks were installed off Brookside and when you leave the Buffer Zone. The club will add more signage. The work does not require a stamped plan. M. Varrell asked if a new filing will be coming in shortly. M. Toohill stated the proposed work will probably take place outside the Buffer Zone.

***Motion to issue a Certificate of Compliance for WELLESLEY COUNTRY CLUB, 0 FOREST STREET (NGWP #16) by P. Alpert, seconded by S. Farr, approved 5-0-0.***

#### **SCA UPDATE – PREVAILING WAGE ISSUE**

M. Varrell explained there is a slight issue with the SCA work from the Town because of prevailing wage law issues. Unless this issue is resolved, the SCA may not be able to build the bridge.

#### **REQUEST FOR CERTIFICATE OF COMPLIANCE – 20 JAMES STREET (DEP FILE #234-656)**

D. Anderson reported that P. Barry had conducted the majority of the Certificate of Compliance inspection for this tear down and re-build project back in 2013. The only remaining outstanding issue per the Meeting minutes was a sign-off from the neighbor stating they were okay that portions of the existing fence were located on their property. This documentation has been submitted. D. Anderson reported that she had visited the site and found it to be stable and in compliance.

***Motion to issue a Certificate of Compliance for 20 JAMES STREET (DEP FILE #234-656)) by S. Farr, seconded by P. Alpert, approved 5-0-0.***

***Motion to adjourn the meeting by S. Farr, seconded by P. Alpert, approved 5-0-0.***

***The meeting was adjourned at 9:51pm.***

#### **NEXT PUBLIC HEARING**

*Thursday, July 9, 2015 at 7:30 PM in the Public Services Administration Building, Charles River Room.*